

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.207 of 2024
In
CRIMINAL APPEAL (SJ) No.4402 of 2023

Arising Out of PS. Case No.-238 Year-2021 Thana- Biddupur District- Vaishali

Muskan Kumari Daughter of Anil Kumar Singh Under The Guardianship of Gayatri Devi, M/o- Muskan Kumari, R/oChechar, P.S.-Biddupur, Distt.-vaishali (hajipur)

... .. Appellant/s

Versus

1. The State of Bihar
2. Sanjeev Kumar Singh Son of Harendra Singh R/o-Chechar, P.S.-Biddupur, Distt.-vaishali (Hajipur)
3. Raju Singh Son of Jugal Kishor Singh @ Jaddu Singh R/o-Chechar, P.S.-Biddupur, Distt.-vaishali (Hajipur)

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 3159 of 2023

Arising Out of PS. Case No.-238 Year-2021 Thana- Biddupur District- Vaishali

1. Sanjeev Kumar Singh S/O Harendra Singh R/O Village- Chechar, Ps. Biddupur, Dist. Vaishali, Bihar
2. Raju Singh S/O Jugal Kishor Singh @ Jaddu Singh R/O Village- Chechar, Ps. Biddupur, Dist. Vaishali, Bihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 207 of 2024)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate

For the Respondent/s : Mr. Mukeshwar Dayal, APP

(In CRIMINAL APPEAL (SJ) No. 3159 of 2023)

For the Appellant/s : Mr. S.K. Lal, Advocate

Mr. Ravish Mishra, Advocate

Ms. Keertika Sakshi, Advocate

For the Respondent/s : Mr. Mukeshwar Dayal, APP

For the Informant : Ms. Vandana Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-11-2024



Sanjeev Kumar Singh and Raju Singh have preferred Cr. App (SJ) No. 3159 of 2023, in which the prayer for suspension of sentence was rejected by a learned Single Judge of this Court.

2. The prosecutrix of this case has also preferred Cr. App (DB) No. 207 of 2024 against the same judgment under Section 372 of the Cr.P.C. with a grievance that conviction of the aforementioned two appellants has only been recorded in lesser offences.

3. Since the appeal under Section 372 of the Cr.P.C., referred to above, was listed before a Division Bench, the Cr. App (SJ) No. 3159 of 2023 of Sanjeev Kumar Singh and Raju Singh was also tagged along with the appeal under Section 372 of the Cr.P.C. by the prosecutrix.

4. We have heard both the appeals together.

5. Appellants/Sanjeev Kumar Singh and Raju Singh [Cr. App (SJ) No. 3159 of 2023] have been represented by Mr. S.K. Lal, assisted by Mr. Ravish Mishra, learned Advocates. Mr. Rajendra Narayan, learned Senior



Advocate has appeared for the prosecutrix in Cr. App (DB) No. 207 of 2024.

6. The State is represented by Mr. Mukeshwar Dayal, learned APP.

7. We propose to deal with the appeal of appellants/Sanjeev Kumar Singh and Raju Singh first.

8. The appellants/Sanjeev Kumar Singh and Raju Singh have been convicted *vide* judgment dated 24.05.2023 for the offences under Sections 323, 341, 342, 354(A) and 354(B) of the IPC and Section 8 of the POCSO Act in connection with POCSO G.R. No. 19 of 2021, arising out of Biddupur P.S. Case No. 238 of 2021 by the learned Additional Sessions Judge-VI-cum-Special Judge, POCSO, Vaishali at Hajipur. By order dated 08.06.2023, they have been sentenced to undergo R.I. for three years, to pay a fine of Rs. 5000/- and in default of payment of fine, to further suffer R.I. for three months under Section 354(A) of the IPC; R.I. for six years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer R.I. for six



months under Section 354(B) of the IPC; and R.I. for three years, to pay a fine of Rs. 5000/- and in default of payment of fine, to further suffer R.I. for three months under Section 8 of the POCSO Act.

9. Both the appellants have been sentenced to pay a fine of Rs. 500/- and in default of payment of fine S.I. for one day for the offences each under Section 323 of the IPC and 341 of the IPC; to pay a fine of Rs. 1000/- and in default of payment of fine, to further suffer S.I. for five days for the offence under Section 342 of the IPC.

10. All the sentences have been directed to run concurrently.

11. The prosecutrix (P.W. 1) has given a horrendous tale of her being gang-raped on 05.05.2021 by around eight persons, out of whom only appellants/Sanjeev Kumar Singh and Raju Singh have been convicted.

12. It was alleged by her in her fardbeyan, though scribed by one Sarita Chaudhary, a police officer in the Mahila Police Station, Biddupur, that while she stayed back



in her old house for locking the doors and her mother proceeded ahead, accused persons viz. Arun Kumar Singh, Harsh Kumar, Yash Kumar and appellant/Raju Singh abducted her forcibly. They also tried to outrage her modesty. When she objected, her clothes were pulled and torn. She was bitten on her cheeks and fingers. She became unconscious. In that state, accused Rajiv Kumar, appellant/Sanjeev Kumar Singh, Abhishek Kumar and Aman committed rape on her.

13. A cortegê procession was passing by. The mother of the prosecutrix (P.W. 2) had also arrived at the scene by that time. With the help of the persons participating in the funeral procession, the victim/prosecutrix could be saved. The victim claims to be in a state of total dishabille. Her personal belongings like her ornaments and her mobile telephone were also snatched away. Someone from the crowd took her to Biddupur Health Centre, where she was admitted. She became unconscious thereafter and therefore did not know what happened.



14. Though no date has been provided in the aforementioned fardbeyan of the victim, a case *vide* Biddupur P.S. Case No. 238 of 2021 dated 05.05.2021 was registered for investigation for offences under Sections 341, 323, 325, 376, 379 and 34 of the IPC and Section 4 of the POCSO Act, 2012.

15. The information about the occurrence reached the police station on the same day at about 8:00 P.M. and the registration of the FIR was contemporaneous with such information. The victim was gang-raped in an old/tumble down poultry farm which was not in use.

16. A bare reading of the FIR would otherwise depict a harrowing tale of a minor girl having been gang-raped by her neighbours and agnates. However, a look at the records of the case would demonstrate that an absolutely false case has been instituted against the appellants and others (against whom the investigation is still pending) because of old land dispute, resulting in criminal cases, Title Suit and Section 144 Cr.P.C. proceeding.



17. Before we examine the deposition of the witnesses, it would be relevant to first look at the evidence of Dr. Shweta Shalini (P.W. 7) who had examined the victim on 05.05.2021 only at about 1.30 P.M.

18. This report also does not appear to be a correct account of what injuries the victim had suffered.

19. On external examination, multiple injuries on different parts of the body of the victim was noticed.

20. We have some doubts about this observation for the reason that P.W. 7 has been candid enough in stating that the injuries were noted in the Rape Proforma Medicolegal Certificate, a copy each of which was handed over to the police and the victim.

21. In the next breath, P.W. 7 disclosed that there was no evidence of any injury. The hymen looked normal. The vaginal swab was sent to the Pathologist, who reported absence of any motile/non-motile spermatozoa.

22. On the basis of the report of the Dentists, the dental age of the victim was assessed between 17 to 18



years. The Radiological report suggested that the victim was between 17 to 19 years. Combining the two reports and the physical examination of the victim, P.W. 7 was of the opinion that the victim was between 17 to 19 years. Thereafter, again P.W. 7 made a contradictory statement that there were multiple external injuries. However, she concluded that there was no evidence of any recent sexual activity.

23. In her cross-examination, she asserted that according to her report, there was no presence of any sign of recent sexual activity. The hymen was intact and looked normal. She admitted that she did not state in her report about the body parts on which multiple injuries were reported. On internal examination of the victim, she had found everything to be normal.

24. Despite this report being absolutely contradictory with respect to the multiple injuries on the person of the victim, what comes out clearly is that even though the victim was medically examined on the day of the



occurrence, there was no sign of any recent sexual violence on the victim against the clear accusation of gang-rape by eight persons.

25. We are conscious of the position of law that mere absence of any trace of any sexual violence would not justify any conclusion of the case being false. Nonetheless, with such specific accusation against the appellants and six others of having sexually violated the victim; the medical report and the evidence of P.W. 7 demonstrate that the accusation is false.

26. We also say this for the reason that according to the fardbeyan of the victim, she was taken to Biddupur Health Centre, where she was admitted in a state of unconsciousness. If this were true, P.W. 7 would not have reported like that.

27. As we have already noted, Sarita Chaudhary, who wrote the fardbeyan as narrated by the victim has not been examined.



28. Chandravati Kumari (P.W. 6), the investigator however has deposed that she undertook the investigation and saw the fardbeyan of the victim and recorded the statements of witnesses viz. Bholu Singh, Shankar Singh (own brothers amongst themselves and having been examined as P.Ws. 3 and 4 respectively); Gayatri Devi (mother-P.W. 2) and Tribhuvan Prasad Singh (P.W. 5).

29. As alleged in the fardbeyan, P.W. 6 inspected the P.O. in the emergency light. The P.O. was located at about 300 to 400 meters north of the cross-roads of village Chechar. There was an unused poultry farm of one Dilip Kumar. Without wasting time, she also got the medical examination of the victim done in Sadar Hospital, Hajipur. The victim's statement under Section 164 of the Cr.P.C. was also recorded simultaneously. Thereafter the appellants/Sanjeev Kumar Singh and Raju Singh were arrested.

30. However, she had not made any site map of the P.O. and she did not claim to have found any evidence



of the offence having been committed at that place. She did not issue any injury report of the victim suggesting that she had not seen any injury on her.

31. She was aware of the fact that with respect to an occurrence on the same day, one Ayush Raj @ Yash, who is the grand-son of Arun Singh, had filed a case against the victim, her parents, her brothers and others under Sections 323, 341, 324, 307, 379, 504 and 506/34 of the IPC. This occurrence had taken place over a dispute with respect to reaping of wheat crops in the field.

32. P.W. 6 also asserted that the victim in her 164 statement has not at all talked about any rape having been perpetrated on her.

33. For these reasons, P.W. 6 had not filed chargesheet against the appellants either under Section 376 or 376/511 of the IPC.

34. On going through the police papers, she remembered of not having entered any fact relating to any injury or confirmation of the allegation of rape against the



victim, in the police papers. On the contrary, she had found that one Sunaina, wife of Arun Singh had filed a Title Suit against Anil Singh (father of the victim) and Tribhuwan Prasad Singh (P.W. 5), which was pending consideration before the competent civil court.

35. She was but not aware of the outcome of the 144 proceeding against the parties. She, as an investigator, was not in know of the fact that Tribhuwan Prasad Singh (P.W. 5) had purchased a land from Gayatri Devi (mother of the victim), which was in some kind of dispute.

36. She had not seized the clothes of the victim.

37. During supervision of the case, the superior police officer made a specific note that the case does not appear to be true so far as the allegation of rape is concerned, as the occurrence had taken place over a dispute arising out of parties trying to reap the standing wheat crops in the field.

38. Several inferences can legitimately be drawn from this deposition of the investigator.



39. The investigator had not seen any injury of any kind on the person of the victim. She was aware of the fact that there was a Title Suit and a criminal case pending between the parties and that no effort was made by her to seize the clothes of the victim or after arrest of the appellants, get them medically examined (as mandated under Section 53(A) of the Cr.P.C.), which would have been a clincher in the investigative process.

40. In this context, we have seen that the defence has brought on record the FIRs of (i) Biddupur P.S. Case No. 237 of 2021 dated 05.05.2021 lodged by Ayush Raj @ Yash against the victim and her family; (ii) Biddupur P.S. Case No. 257 of 2019 filed by one Birendra Kumar of village Chechar against the mother and the brothers of the victim; (iii) Biddupur P.S. Case No. 431 of 2018 lodged by the mother of the victim against Arun Kumar Singh; (iv) Biddupur P.S. Case No. 169 of 2019 lodged by Arun Kumar Singh against the father and the brothers of the victim and of (v) Biddupur P.S. Case No. 63 of 2020 lodged by Arun



Kumar Singh again against the father and the brothers of the victim.

41. Along with these FIRs, the defence has also brought on record the plaint of Title Suit No. 162 of 2018 filed by Sunaina, wife of Arun Kumar Singh against Tribhuvan Prasad Singh (P.W. 5) and others from the side of the family of the victim as also the records of 144 Cr.P.C. proceeding in which the first party is the mother of the victim and the second party is Arun Kumar Singh.

42. For clarity, it must be stated here that Arun Kumar Singh and Ayush Raj @ Yash have been named by the victim as the perpetrators of the crime, though no evidence could be collected against them.

43. In order to quench our curiosity about the relationship of the two appellants with the other accused persons as also the victim and her family, we have found from the records, especially from the deposition of the defence witnesses that the grand-father of Arun and the grand-father of the appellants were own brothers.



44. What comes out clearly from this sequence of events is that on 05.05.2021, an occurrence had taken place in the fields where Arun Kumar Singh and his associates were getting the wheat crops reaped which was objected by the victim, her parents and her brothers. This had led to a scuffle where Ayush Raj @ Yash, the maternal grand-son of Arun, was seriously injured in his arm by a knife.

45. It was precisely at that time that the victim also had lodged a case, referred to above, alleging wildly that she was gang-raped by eight persons including the appellants.

46. We know it for sure that enmity cuts both ways and the factual background of enmity cannot be always read as a defence for the accused persons. However, in the present set of circumstances, with the conflicting statements of the victim (refer to her 164 statement, where no allegation of rape was made by her), we find that this was an abominable way in which the family of the victim



wanted to avenge the enmity or secure a defence for them in the cases lodged by Ayush @ Yash, Arun Kumar Singh and others about which we have referred to earlier.

47. What further strikes us hard is that the victim did not speak about the date and time of the occurrence. What she however disclosed in her fardbeyan was that she was firstly admitted to Biddupur Health Centre for which there is no record available. If this were so, then the investigator would surely have mentioned about it.

48. Was the victim referred to the Sadar Hospital at Hajipur or was she taken there at the instance of the investigator thus remains unknown.

49. This shakes the very foundation of the prosecution case, giving justification to the appellants to comment that the victim is wholly unreliable and her deposition cannot be acted upon for convicting the appellants.

50. Section 3 of the Evidence Act, defines evidence which is broadly divided into oral and documentary.



Evidence under the Act is the means, factor or materials, lending a degree of probability through a logical inference to the existence of a fact. It is an adjective law highlighting and adding the substantive law. Thus, evidence and collection of it is neither wholly procedural nor substantive but reflects the trappings of both.

51. A court of law would rely on that evidence, if such accusation is proved. The evidence gives discretion and flexibility to the Court in deciding the existence of a fact. Such evidence could be circumstantial; corroborative; derivative; direct; documentary; hearsay; indirect; oral; presumptive; primary; secondary etc. These supplement the evidence in proving the existence of a fact by enhancing the degree of probability.

52. The Supreme Court while exhaustively dealing with the probative value of any evidence in ***Rajesh Yadav and Anr. v. State of U.P., (2022) 12 SCC 200*** has adumbrated that what is required of the Court is the conclusion on the basis of existence of a fact by analyzing



the matters before it on the degree of probability. The entire enactment of the law of evidence is meant to facilitate the Court to come to an appropriate conclusion in proving of fact.

53. There could be two methods by which the Court is expected to come to such a decision. It can come to a conclusion on the existence of a fact by merely considering the matters before it, in forming an opinion that it does exist. This belief of the Court is based upon the assessment of matters before it. Alternatively, the Court can consider the said existence as probable from the perspective of a prudent man, who might act on the supposition that it exists.

54. The question as to the choice of the options is best left to the Court to decide, which decision might impinge upon the quality of the matters before it.

55. It is needless to reiterate that while appreciating the evidence, there would be three categories



of witnesses *viz.*, who are wholly reliable, wholly unreliable and neither wholly reliable nor wholly unreliable.

56. If the evidence, along with the matters surrounding it, makes the Court believe that it is wholly reliable qua an issue, it can decide its existence on a degree of probability. Similar is the case where the evidence is not believable. When evidence produced is neither wholly reliable nor wholly unreliable, it might require corroboration and in such a case, Court can also take note of the contradictions available in other matters (refer to ***Vedivelu Thevar v. State of Madras, AIR 1957 SC 614***).

57. In this background, we have analyzed the evidence of the victim (P.W. 1) and her mother (P.W. 2) *vis-a-vis* of Bholu Singh and Shankar Singh (P.W.s 3 and 4 respectively) and Tribhuwan Prasad Singh (P.W. 5).

58. The victim in her deposition before the Trial Court gave a totally different version of the occurrence than what she had to narrate before the Magistrate under Section 164 of the Cr.P.C., where she only talked of her



having been bitten on her cheeks and fingers and her being divested of her mobile telephone and ornaments. Within no time, she supplemented it with accusation of gang-rape against her. She claims to have been born on 01.01.2007, which fact also could not be proved and established.

59. We must state here that there was no objection with respect to this date of birth of the victim by the defence. Nonetheless, nothing was brought on record to demonstrate that the victim was a minor.

60. In her cross-examination, she has admitted that almost all the accused persons including the appellants are her neighbours and agnates. But very conveniently, she expressed her ignorance about various criminal cases pending against her family, which was pointedly brought to her notice. Though, some uncomfortable questions to her in the dock were not permitted by the Court but the substratum of her accusation was that she was gang-raped by her agnates and she had no idea that there were several litigations in the family, civil and criminal both.



61. Similar statement has been made by the mother of the victim (P.W. 2), but she, on the contrary, admitted about the existence of Biddupur P.S. Case No. 237 of 2021 lodged by Ayush Raj @ Yash on the same day, *i.e.*, on 05.05.2021 and other cases about which reference has been made earlier.

62. There is yet another strange assertion by her in the cross-examination *viz.* that she reached the scene of crime half an hour late she found the victim unconscious and took her to Biddupur Hospital with the help of Bhola, Tribhuwan and Satruhan etc. All her associates went away from Biddupur Hospital and the victim remained unconscious for about eight to nine days. She could regain her consciousness only in Hajipur Hospital, where her statement was recorded by the police over which she had also put her thumb impression.

63. This is chronologically incorrect.



64. The occurrence had taken place on 05.05.2021 and the fardbeyan also was recorded on 05.05.2021.

65. The entire story of visit to Biddupur Health Centre; the victim remaining unconscious for eight to nine days and then the recording of the fardbeyan thereafter when she regained sense in the Sadar Hospital, Hajipur are all lies.

66. Bholu Singh (P.W. 3) is a neighbour, who claims to have seen the victim unconscious at the poultry farm of Dilip Singh. His statement was recorded on 06.05.2021. With respect to Biddupur P.S. Case No. 277 of 2018 lodged by one Parmanand Singh against the father of the victim (P.W. 3), he stated before the Trial Court that the brother of the victim was falsely implicated in that case.

67. All the accused persons including the appellants are in some way related to Arun Singh. The own brother of P.W. 3 viz., Shankar Singh (P.W. 4) has turned hostile. Tribhuvan Prasad Singh (P.W. 5), who appears to



be the main motivating influence on the victim and her mother, claims to have learnt from them (the victim and her mother) about the occurrence and the participation of the appellants as also others.

68. We have already mentioned that from the evidence of the defence witnesses, seven in number, we could elicit that Tribhuvan had purchased a land from Gayatri, over which there was a dispute, perhaps with Arun and others. It was this which propelled Tribhuvan to get the case lodged and be a witness for the prosecution in such a case.

69. The learned Advocate for the appellants/Sanjeev and Raju has thus concluded his argument by saying that the case is only a bundle of lies and the prosecution has miserably failed to prove that.

70. Contesting the submissions, Mr. Rajendra Narayan, the learned senior Advocate for the victim, who has sought a revisit to the judgment for recording conviction against the appellants for lesser offences and not under



Section 376D of the IPC, has argued that in view of the consistency of the accusation by the victim, her mother and others, any discrepancy in the medical report ought not to be magnified to the extent of discarding the prosecution case. He has also referred to a decision of the Supreme Court in the case of ***State of Maharashtra v. Chandraprakash Kewal Chand Jain*** reported in **(1990) 1 SCC 550** to bring home the point that the prosecutrix of a sex-offence cannot be put at par with an accomplice. She is, in fact, a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars.

71. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in case of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more.



72. He has further highlighted the observation of the Supreme Court in the aforementioned case that what is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person, who is interested in the outcome of the charge levelled by her.

73. However, the observations of the Supreme Court in the same paragraph of the judgment provides a ready answer to the countervailing argument made by Mr. Narayan.

74. The Supreme Court has observed very pithily that the nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. If the totality of the circumstances appearing on record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.



75. We have already noted the circumstances of the case. A fight had taken place between the family of the victim, including the victim herself and one of the named accused persons of this case with definite overt act of participating in the gang-rape viz., Yash having lodged a case against the victim and her family.

76. In conjunction with this, the string of criminal and civil cases between the parties and no sign of any sexual violence, much less gang-rape, makes the evidence of the victim absolutely unbelievable.

77. She appears to have a strong motive of falsely implicating the appellants and other accused persons.

78. We are not oblivious to the emotional turmoil and the psychological injury of a prosecutrix on her being molested or raped, provided she has been subjected to such an offence. A victim of sex-offence undoubtedly would suffer a tremendous sense of shame as also of being violated by villagers and agnates.



79. This does not appear to be the case here. The medical evidence completely belies it. The evidence of the victim and her mother are so asynchronous that those do not fit in the original prosecution tale.

80. In this context, we are reminded of the pearly wisdom of the Supreme Court in ***Masalti and Ors. v. State of U.P. (AIR, 1965. SC 202)*** that when a criminal Court has to appreciate evidence given by a witness, who is partisan or interested, it has to be very careful in weighing such evidence: whether or not there are discrepancies in the evidence; whether or not the evidence strikes the Court as genuine; whether or not the story disclosed by the evidence is probable.

81. These are all matters which must be taken into account.

82. These facts coupled with the complete non-observance of the mandate contained under Section 53(A) of the Cr.P.C., entitles the defence to suggest for an adverse inference against the prosecution case.



83. We find that the evidence is not strong enough to even justify the conviction of the appellants in lesser offences.

84. For this reason we dismiss the appeal preferred by the victim under Section 372 of the Cr.P.C.

85. Taking into account the embellishment and exaggeration and the motive for falsely implicating the appellants, we do not even find it safe to convict the appellants for those lesser offences.

86. Finding the prosecution against the appellants to be absolutely without merits, we set aside the judgment and order of conviction against the appellants and acquit them of all the charges.

87. The appellants are in jail. They are directed to be released from jail forthwith, if not warranted or detained in any other case.

88. Criminal Appeal (SJ) No. 3159 of 2023 is thus allowed.



89. Criminal Appeal (DB) No. 207 of 2024 is dismissed.

90. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

91. The records of this case be returned to the Trial Court forthwith.

92. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

krishna/shahnawaj

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.11.2024
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